

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KAREN L. RILEY,

Plaintiff,

v.

**UPPER ALLEGHENY HEALTH
SYSTEM, et al.**

Defendants,

v.

**GULFSTREAM ANESTHESIA
CONSULTANTS, P.A.,**

Third-Party Defendant.

Case No. 1:18-cv-17

MEMORANDUM ORDER

This civil action, involving claims of medical negligence, was commenced by Plaintiff Karen L. Riley on January 16, 2018. The matter was originally referred to the undersigned, then a United States Magistrate Judge, for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and the Local Rules for Magistrate Judges. On September 18, 2018, the case was transferred to the undersigned in her current capacity as a United States District Judge. ECF No. 62. On September 27, 2018, the case was referred to United States Magistrate Judge Richard A. Lanzillo for all further pretrial proceedings, with the undersigned remaining as the presiding district court judge. ECF No. 66.

On April 25, 2019, Judge Lanzillo issued a Magistrate Judge's Report and Recommendation ("R&R"), ECF No. 85, in which he opines that the Plaintiff's Motion to Dismiss Less Than All Parties with Prejudice, ECF No. 72, should be granted. Plaintiff's motion

arises from the fact that she has reached a settlement with Defendants Upper Allegheny Health System, Inc., Bradford Hospital, t/d/b/a Bradford Regional Medical Center, and Jason D. Kinkartz, M.D. (“Settling Defendants”). Under the terms of her settlement agreement, and consistent with conditions imposed by the Commonwealth’s Medical Care Availability and Reduction of Error Fund (“Mcare”), Plaintiff agreed to dismiss the Settling Defendants, with prejudice, upon receipt of the settlement funds. Upon dismissal of the Settling Defendants, Plaintiff’s only remaining claims will be against Defendant Louis J. Nitsos, M.D.

Defendant Nitsos opposes Plaintiff’s motion and has filed objections to the R&R. *See* ECF Nos. 76, 83, and 89. Dr. Nitsos contends that it is premature to dismiss the Settling Defendants, and also potentially prejudicial to his interests.

This Court disagrees. Discovery in this case has been ongoing and, to this Court’s understanding, it is mostly complete. Thus, at this stage of the proceedings, the parties should have fairly well-formed litigation strategies. Meanwhile, Dr. Nitsos, with leave of Court, has asserted crossclaims against the Settling Defendants for contribution and/or indemnity. To the extent those claims are actually ripe, they will remain pending even if Plaintiff’s claims against the Settling Defendants are dismissed. And, even in the absence of such claims, Dr. Nitsos retains the right to have the Settling Defendants appear on the verdict slip in order to obtain an accurate apportionment of his own liability, assuming he can adduce *prima facie* evidence of the Settling Defendants’ liability at time of trial. In sum, Plaintiff’s motion is not premature, and Dr. Nitsos’ interests should be adequately protected even if the Plaintiffs’ claims against the Settling Defendants are dismissed.

Accordingly, after *de novo* review of the Complaint and the other pleadings and documents in the case, together with the R&R and Defendant Nitsos' objections thereto, the following order is entered:

NOW, this 11th day of July, 2019;

IT IS HEREBY ORDERED that Plaintiff's Motion to Dismiss Less Than All Parties with Prejudice, ECF No. [72], shall be, and hereby is, GRANTED.

The Report and Recommendation of United States Magistrate Judge Richard Lanzillo, dated April 25, 2019, ECF No. [85], is hereby adopted as the opinion of this Court.

/s/ Susan Paradise Baxter
SUSAN PARADISE BAXTER
United States District Judge

cc: Counsel of Record

The Honorable Richard A. Lanzillo
United States Magistrate Judge